

Award No. 11043

Docket No. TE-9353

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
— EASTERN LINES —**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that

1. The Carrier violated and continues to violate the Agreement between the parties when, beginning August 8, 1955, and continuing until August 18, 1955, it forced Telegrapher W. R. Owen to vacate his regularly assigned position and required him to work another position with an assignment outside the hours of his own position and thereafter refused and continues to refuse to compensate him as provided by said Agreement; and

2. The Carrier shall now be required to pay claimant Owen the difference between 8 hours at the time and one-half rate and 8 hours at the pro rata rate for work performed outside his regularly assigned hours, plus 8 hours pay at the pro rata rate of his regularly assigned position in addition to what he was paid for August 10, 13, 14 and 17, 1955.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

At Morris, Kansas, the Carrier maintains a station in which, as indicated at page 65 of the Agreement, it employs an agent and three shifts of telegraphers in around-the-clock service. In addition to these employees there is also assigned a rest day relief position, occupied by claimant herein, which is assigned to protect rest day relief work as follows:

Sat. - Sun.	8:00 A. M. - 4:00 P. M.
Mon. - Tues.	4:00 P. M. - 12:00 midnight
Wed.	12:00 M - 8:00 A. M.
Rest days Thursday and Friday.	

Telegrapher B. F. Liebst, regularly assigned to a position at Turner, Kansas, resigned. This position was bulletined as provided by the Agree-

nas held that in an emergency Carrier may use other employes outside the Telegraphers' craft . . .".

In Award 6686, the Board, in rendering its decision, said:

"Thus we must examine the evidence in each case to see whether an emergency existed and what was the motivating cause of the Carrier's action in requiring employes to suspend work on their regular jobs. Here the evidence shows that the cause for such action was that the relief clerk at the Scranton Enginehouse reported off sick. We think that created an emergency."

In Award 6843, the Board defined an emergency as follows:

"When is an emergency created, or when does it exist? 'Sickness or accident, or some unforeseen occurrence that could not be anticipated' created an emergency."

Certainly in the instant case, the absence of an available and qualified extra employe to protect the temporary vacancy resulting from the resignation of H. B. Conkey created an emergency as defined above, in that it was an unforeseen occurrence that could not be anticipated. It is true that the Carrier had some five (5) days advance notice of Mr. Conkey's resignation; however, there was nothing that could be done to alleviate the situation except to increase the extra board by hiring a new telegraph service employe which, of course, is practically impossible on such short notice.

Admittedly, the motivating cause in the awards referred to by the Carrier is sickness; however, the Carrier wishes to point out that sickness in itself does not create an emergency. The emergency is present only when there are no extra employes available to protect the service. In other words, an emergency exists only when there are no extra employes available to protect temporary vacancies resulting from unforeseen occurrences such as sickness, resignations, accidents, etc.

In conclusion, the Carrier respectfully asserts that the claim of the employes, in the instant dispute, is entirely without support under the agreement rules and should either be dismissed or denied in its entirety.

The Carrier is uninformed as to the arguments the Employes will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence or argument as it may conclude are required in replying to the Organization's ex parte submission or any subsequent oral or written arguments or briefs presented by the Organization in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

OPINION OF BOARD: The facts are not in dispute. Mr. B. F. Liebst, who was on a leave of absence, resigned from Position 5015 effective July 19, 1955, the expiration date of his leave of absence. Position 5015 was advertised as a permanent vacancy on July 21, 1955, with bids closing on July 28, 1955. Mr. H. C. Humphrey, regularly assigned Telegrapher-Clerk to Position No. 1760 was the successful bidder and was assigned to Position No. 5015 on August 8, 1955.

In the meantime, Mr. H. B. Conkey, who was assigned to Position No. 5015 while Mr. Leibst was on leave of absence, notified the Carrier by letter dated July 29, 1955, that he was resigning effective at the close of work on August 7, 1955. This letter was received by the Carrier on August 2, 1955.

The vacancy on Telegrapher-Clerk Position No. 1760, occasioned by Mr. Humphrey's bidding in the vacancy of Position No. 5015 was advertised on July 30, 1955, with a closing date of August 6, 1955.

Mr. C. W. McCoy from the Telegraphers' extra board was the successful bidder to Position No. 1760. Mr. McCoy was also an extra dispatcher under the Dispatchers' Agreement. He was then working as a temporary dispatcher relieving other dispatchers during their vacation absences. He was so employed as a dispatcher between July 31 and August 19, 1955 and was, therefore, not immediately available to fill Position No. 1760.

Since there was no extra telegrapher available to temporarily fill Position No. 1760, Claimant, who was a Relief Operator on Position No. 9045, was taken off his Position and assigned to Position No. 1760, August 10 through August 18, 1955. August 8, 9, 15 and 16 were rest days of Position No. 1760 which Claimant worked on his regular assignment as Relief Operator on Position No. 9045.

On August 19, 1955, Extra Operator, L. E. Smith became available and was assigned to protect the vacancy on Position No. 1760, permitting Claimant to return to his regular assignment.

Claimant is asking for eight (8) hours at time and one-half in addition to the eight (8) hours he was paid for each of the following days: August 10, 13, 14 and 17, 1955.

The sole question is whether an "emergency" existed within the meaning and intent of Article X, Section 2-a. This Section says:

"A regularly assigned employee will not be taken off his assignment to perform relief work except in cases of emergency, but when so used will be compensated as follows:

(1) The employee will be paid not less than a minimum of eight (8) hours for each day he is assigned to work on his assigned position.

(2) If the employee is required to perform work on the rest day of his own regular assignment, he shall be paid therefor at time and one-half rate.

(3) Payment for time worked on emergency position will be at the higher rate of the two positions involved.

(4) If the relief work is outside of the city in which his regular assignment is located, payment will be at pro rata for time worked within the hours of his own regular assignment and time and one-half for time worked outside the hours of his own regular assignment."

Claimant was paid in accordance with Article X, Section 2-a while assigned to Position No. 1760.

Employees contend that no emergency existed. The situation, they argue, was "caused by Carrier's short-sightedness in scheduling too many vacations at the same time." They emphasize "that it was not the relief for vacations of telegraphers that caused the difficulty; it was dispatchers' vacations that required the services of McCoy and thus caused the vacancy. The telegraphers have no control over or voice in scheduling of dispatchers' vacations."

The Agreement does not define "emergency". There are many definitions contained in Awards of this Board. None are all-inclusive and they cover many contingencies. In Award 7403 (Larkin) we said that emergency situations involve "acts of God, possible loss or damage to property, **and other such emergencies beyond the control of the Carrier.**" (Emphasis ours.) We reviewed several previous definitions in Award 4354 (Robertson) which variously stated that an emergency "is suggestive of a sudden occasion; **pressing necessity**; strait, crisis. It implies a critical situation requiring immediate relief by whatever means at hand." (Emphasis ours.) In Award 10839 we adopted the definition in Webster's dictionary which says that an emergency "is an unforeseen combination of circumstances requiring immediate action."

It is evident that the resignation of Mr. B. F. Leibst followed by the resignation of Mr. H. B. Conkey started a chain of events which could not have been foreseen by the Carrier. The situation was a "pressing necessity" which required "immediate action."

Employees rely heavily on Award 2942 (Carter) where we held that: "A party cannot ordinarily assert his own negligence or want of foresight as an unavoidable emergency". Carrier maintained an extra board of sixteen (16) employees. There is no evidence in the record that this number was inadequate. On the contrary, the record shows that vacations were scheduled during each month of the year. The heavy months were January and April with 15 each; May with 16, and August with 17. Only June, July and November each showed fewer than 10 vacation schedules. Wherever possible, Carrier gave vacation preference to senior employees. The 1955 Vacation Schedule was approved by the Employees' Representative.

It has long been a practice that many employees maintain seniority status on both the Telegraphers and Dispatchers Seniority Rosters. Dispatchers positions are generally sought after because they pay a higher hourly rate; it is considered a promotion. This practice is not denied by the Employees.

From all of the evidence in the record, it is clear that an emergency did exist.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.